

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ERNEST J. BROOKS,)	Case No. 08cv125-JM (BLM)
)	
Petitioner,)	ORDER GRANTING RESPONDENT'S
v.)	REQUEST TO CONTINUE
)	
KEN CLARK, Warden,)	[DOC. NO. 7]
)	
Respondent.)	
_____)	

On April 22, 2008, Respondent in the above matter requested an extension of time to file his motion to dismiss or answer. Doc. No. 7. In support, his counsel stated that she has only recently received the appellate record, has not yet received other relevant paperwork, and has conflicting work obligations with other cases. Respondent's motion is hereby **GRANTED** as follows.

1. Respondent shall file a motion to dismiss pursuant to Rule 4 of the Rules Governing § 2254 Cases no later than May 28, 2008. The motion to dismiss shall not address the merits of Petitioner's claims, but rather shall address all grounds upon which Respondent contends dismissal without reaching the merits of Petitioner's claims is

1 warranted.¹ At the time the motion to dismiss is filed, Respondent shall
2 lodge with the Court all records bearing on Respondent's contention in
3 this regard. A hearing date is not required for the motion to dismiss.

4 2. If Respondent files a motion to dismiss, Petitioner shall file
5 his opposition, if any, to the motion no later than **June 27, 2008**. At
6 the time the opposition is filed, Petitioner shall lodge with the Court
7 any records not lodged by Respondent which Petitioner believes may be
8 relevant to the Court's determination of the motion.

9 3. Unless the Court orders otherwise, Respondent shall not file a
10 reply to Petitioner's opposition to a motion to dismiss. If the motion
11 is denied, the Court will afford Respondent adequate time to respond to
12 Petitioner's claims on the merits.

13 4. If Respondent does not contend that the petition can be decided
14 without the Court reaching the merits of Petitioner's claims, Respondent
15 shall file and serve an answer to the petition, as well as points and
16 authorities in support of such answer, no later than **June 12, 2008**. At
17 the time the answer is filed, Respondent shall lodge with the Court all
18 records bearing on the merits of Petitioner's claims. The lodgments
19 shall be accompanied by a notice of lodgment which shall be captioned
20 **"Notice of Lodgment in 28 U.S.C. § 2254 Habeas Corpus Case - To be Sent**
21 **to Clerk's Office.**" Respondent shall not combine separate pleadings,
22 orders or other items into a combined lodgment entry. Each item shall
23 be numbered separately and sequentially.

24 5. Petitioner may file a traverse to matters raised in the answer
25 no later than **July 11, 2008**. Any traverse by Petitioner shall (a) state
26

27 ¹If Respondent contends Petitioner has failed to exhaust any state remedies as
28 to any ground for relief alleged in the Petition, the motion to dismiss shall also
specify the state remedies still available to Petitioner.

1 whether Petitioner admits or denies each allegation of fact contained in
2 the answer; (b) be limited to facts or arguments responsive to matters
3 raised in the answer; and (c) shall not raise new grounds for relief
4 that were not asserted in the petition. Grounds for relief withheld
5 until the traverse will not be considered. No traverse shall exceed ten
6 (10) pages in length absent advance leave of Court for good cause shown.

7 6. A request by a party for an extension of time within which to
8 file any of the pleadings required by this Order should be made in
9 advance of the due date of the pleading, and the Court will grant such
10 a request only upon a showing of good cause. Any such request shall be
11 accompanied by a declaration under penalty of perjury explaining why an
12 extension of time is necessary.

13 7. Unless otherwise ordered by the Court, this case shall be
14 deemed submitted on the day following the date Petitioner's opposition
15 to a motion to dismiss and/or his traverse is due.

16 8. Every document delivered to the Court must include a
17 certificate of service attesting that a copy of such document was served
18 on opposing counsel (or on the opposing party, if such party is not
19 represented by counsel). Any document delivered to the Court without a
20 certificate of service will be returned to the submitting party and
21 disregarded by the Court.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 9. Petitioner shall immediately notify the Court and counsel for
2 Respondent of any change of Petitioner's address. If Petitioner fails
3 to keep the Court informed of where Petitioner may be contacted, this
4 action will be subject to dismissal for failure to prosecute.

5 **IT IS SO ORDERED.**

6 DATED: April 23, 2008

7 

8 BARBARA L. MAJOR
9 United States Magistrate Judge

10
11
12 COPY TO:

13 HONORABLE JEFFREY T. MILLER
14 U.S. DISTRICT JUDGE

15 ALL COUNSEL
16
17
18
19
20
21
22
23
24
25
26
27
28